

mission, goal, or program activity. A candidate also may meet the special needs criteria by meeting agency workforce needs, as documented in the agency's strategic human capital plan.

(c) *Pay rate determination.* An agency may consider one or more of the following factors, as applicable in the case at hand, to determine the step at which to set an employee's payable rate of basic pay using the superior qualifications and special needs pay-setting authority:

(1) The level, type, or quality of the candidate's skills or competencies;

(2) The candidate's existing salary, recent salary history, or salary documented in a competing job offer (taking into account the location where the salary was or would be earned and comparing the salary to payable rates of basic pay in the same location);

(3) Significant disparities between Federal and non-Federal salaries for the skills and competencies required in the position to be filled;

(4) Existing labor market conditions and employment trends, including the availability and quality of candidates for the same or similar positions;

(5) The success of recent efforts to recruit candidates for the same or similar positions;

(6) Recent turnover in the same or similar positions;

(7) The importance/criticality of the position to be filled and the effect on the agency if it is not filled or if there is a delay in filling it;

(8) The desirability of the geographic location, duties, and/or work environment associated with the position;

(9) Agency workforce needs, as documented in the agency's strategic human capital plan; or

(10) Other relevant factors.

(d) *Consideration of recruitment incentive.* In determining whether to use the superior qualifications and special needs pay-setting authority and the level at which the employee's payable rate of basic pay should be set, an agency must consider the possibility of authorizing a recruitment incentive under 5 CFR part 575, subpart A.

(e) *Approval and documentation requirements.* (1) An agency must approve each determination to use the superior qualifications and special needs pay-

setting authority prior to the candidate entering on duty. Each determination must be made in writing and reviewed and approved by an official of the agency who is at least one level higher than the employee's supervisor, unless there is no official at a higher level in the agency.

(2) An agency must document all of the following for each determination to use the superior qualifications and special needs pay-setting authority sufficient to allow reconstruction of the action taken in each case:

(i) The superior qualifications of the candidate under paragraph (b)(1) of this section or the special agency need for the candidate's services under paragraph (b)(2) of this section which justifies a higher than minimum rate;

(ii) An explanation of the factor(s) and supporting documentation under paragraph (c) of this section which were used to justify the rate at which the employee's pay is set. The written documentation must explain how the factors directly relate to the rate approved; and

(iii) The reasons for authorizing a higher than minimum rate instead of or in addition to a recruitment incentive under 5 CFR part 575, subpart A.

(f) *Ensuring compliance.* An agency must establish appropriate internal guidelines and evaluation procedures to ensure compliance with the law, this section of OPM regulations, and agency policies.

[70 FR 31291, May 31, 2005, as amended at 73 FR 66152, Nov. 7, 2008]

§531.213 Setting pay upon change in position without a change in grade.

For an employee who is moved laterally (by transfer, reassignment, change in type of appointment, change in official worksite, or other change in position) from one GS position to a different GS position without a change in grade or a break in service, the agency must determine the employee's payable rate of basic pay and any underlying rate(s) of basic pay based on the employee's new position of record, new official worksite, and the step (or relative position in range for a GM employee) in effect before the position change. If an employee is eligible to receive a higher rate under the maximum

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payable rate rule in § 531.221, the agency may choose to apply that rule. If an employee is entitled to pay retention, the agency must apply the rules in 5 CFR part 536.

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§ 531.214 Setting pay upon promotion.

(a) *General.* An agency must set an employee's payable rate of basic pay upon promotion following the rules in this section, consistent with 5 U.S.C. 5334(b). The promotion rule in 5 U.S.C. 5334(b) and the implementing rules in this section apply only to a GS employee who is promoted from one GS grade to a higher GS grade. Consistent with § 531.206, any general pay adjustment that takes effect on the same day as a promotion action must be processed before applying the rules in this section.

(b) *Geographic conversion.* When an employee's official worksite is changed to a new location where different pay schedules apply, the agency must convert the employee to the applicable pay schedule(s) and rate(s) of basic pay for the new official worksite based on the employee's position of record before promotion as provided in § 531.205 before processing a simultaneous promotion action.

(c) *Simultaneous within-grade increase.* When an employee is entitled to a within-grade increase or a quality step increase that is effective at the same time as a promotion, the agency must process that increase before processing the promotion action.

(d) *Promotion rule—(1) General.* An agency must determine an employee's payable rate of basic pay upon promotion using the standard method in paragraph (d)(3) of this section or the alternate method in paragraph (d)(4) of this section, subject to the special rule in paragraph (d)(5) of this section for employees receiving a retained rate before promotion. A determination regarding whether the alternate method is used in place of the standard method depends on the pay schedules that

apply to an employee before and after promotion, as provided in paragraph (d)(2) of this section. In this paragraph (d), references to an employee's rate or range “before promotion” mean the rate or range before promotion but after any geographic conversion required by paragraph (b) of this section.

(2) *Determining applicable method.* The following rules govern determinations regarding which promotion method to use:

(i) Apply the standard method exclusively if the employee is covered by the same pay schedules before and after promotion. For example, an employee may be covered by the General Schedule and the same locality rate schedule before and after promotion.

(ii) Apply the alternate method if the employee is covered by different pay schedules before and after promotion and if the alternate method will produce a higher payable rate upon promotion than the standard method. For example, an employee may be covered after promotion by a special rate schedule that did not apply to him or her before promotion, and the alternate method will produce a higher rate.

(iii) Apply the standard method in all other circumstances, except that an agency may, at its sole and exclusive discretion, apply the alternate method for an employee covered by different pay schedules before and after promotion even though the method produces a lesser payable rate than the standard method, but only under the following conditions:

(A) The agency determines it would be inappropriate to use the standard method based on a finding that the higher pay for the position before promotion is not sufficiently related to the knowledge and skills required for the position after promotion; and

(B) The agency informs the employee of the determination to use the alternate method before the effective date of the promotion.

(3) *Standard method.* (i) The standard method of applying the promotion rule is presented in the following table: